

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

JOHN JAY CUNNINGHAM,)

Defendant.)

CASE NO. CR 05 417 RSM

DETENTION ORDER

Offense charged: Counts I and II: CONSPIRACY TO DISTRIBUTE
MARIJUANA AND COCAINE.

Date of Detention Hearing: November 29, 2005.

The Court, having conducted a contested detention hearing pursuant to Title 18
U.S.C. § 3142(f), and based upon the factual findings and statement of reasons for detention
hereafter set forth, finds that no condition or combination of conditions which the defendant
can meet will reasonably assure the appearance of the defendant as required and the safety
of any other person and the community.

The Government was represented by Lisca Borichewski. The defendant was represented
by Stephen Illa.

FINDINGS OF FACT AND STATEMENT OF REASONS FOR DETENTION

- (1) There is probable cause to believe the defendant committed the drug offense of Possession with Intent to Distribute Cocaine Base.

The maximum penalty is in excess of ten years.

There is therefore a rebuttable presumption against the defendant's release based upon both dangerousness and flight risk, under Title 18 U.S.C. § 3142(e).

- (2) Nothing in this record satisfactorily rebuts the presumption against release for several reasons: Using the factors below, under Title 18 § 3142 (g), the Court considered the following:

(a) The nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug.

(b) The weight of the evidence: This case involves a search of this Defendant's residence where in \$100,000 was located under the sink. \$60,000 in a safe along with a 9mm loaded magazine which te Defendant identified as his were also located in his residence.

(c) The history and characteristics of the person, including:
The person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, record concerning appearance at court proceedings, and whether at the time of the current offense or arrest, the person was on probation, on parole, on other release pending trial, sentencing, appeal, or completion of

1 sentence of an offense under Federal, State, or local law. At the
2 time of his arrest, this Defendant was heard telling the co.
3 defendant that she would be released before he would, hence she
4 should "liquidate everything!" While this is susceptible to a
5 myriad of interpretations, the Court through the use of seizure
6 warrants (after this hearing) is aware of joint bank accounts which
7 appear to be proceeds of illegal drug activity, lending some
8 credibility to the allegation of the Defendant's appearance of
9 obstructing justice by this statement to his co-defendant

10 (d) Risk of Flight.

11 He is identified by law enforcement as involved in a first degree
12 Assault and Felony Flight (eluding) in another jurisdiction. His
13 co-defendant Luera is also implicated having allegedly assisted
14 him in his flight.

15 Based upon the foregoing information which is consistent with the
16 recommendation of U.S. Pre-trial Services, it appears that there is no condition
17 or combination of conditions that would reasonably assure future Court
18 appearances and/or the safety of other persons or the community.

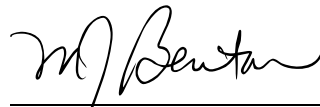
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20 **It is therefore ORDERED:**

- 21 (1) The defendant shall be detained pending trial and committed to the
22 custody of the Attorney General for confinement in a correction facility
23 separate, to the extent practicable, from persons awaiting or serving
24 sentences or being held in custody pending appeal;
- 25 (2) The defendant shall be afforded reasonable opportunity for private
26 consultation with counsel;

1 (3) On order of a court of the United States or on request of an attorney for
2 the Government, the person in charge of the corrections facility in which
3 the defendant is confined shall deliver the defendant to a United States
4 Marshal for the purpose of an appearance in connection with a court
5 proceeding; and

6 (4) The clerk shall direct copies of this order to counsel for the United
7 States, to counsel for the defendant, to the United States Marshal, and to
8 the United States Pretrial Services Officer.
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11 DATED this 9th day of December, 2005.
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14 MONICA J. BENTON
15 United States Magistrate Judge
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